



International Tribunal for the
Prosecution of Persons Responsible
for Serious Violations of International
Humanitarian Law Committed in the
Territory of the Former Yugoslavia
since 1991

Case No.: IT-04-74-T
Date: 28 January 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Acting Registrar: Mr John Hocking

Order of: 28 January 2009

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ**

PUBLIC

**ORDER ADMITTING EVIDENCE REGARDING WITNESS MIRKO
ZELENKA**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A.A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”);

CONSIDERING that Counsel for the Accused Prlić (“Prlić Defence”) requested the admission of 75 exhibits¹ while Counsel for the Accused Stojić (“Stojić Defence”), Counsel for the Accused Petković (“Petković Defence”) and the Office of the Prosecutor (“Prosecution”) respectively requested the admission of nine,² 17³ and 14⁴ exhibits relating to the testimony of Mirko Zelenika (“Proposed Exhibits”) who appeared from 13 to 16 October 2008,

CONSIDERING that the Chamber has examined the objections raised by the Prlić Defence to certain Proposed Exhibits from the Prosecution⁵ and notes that the other parties did not raise any objections to the Proposed Exhibits,

NOTING the Order Requesting Additional Observations from the Parties of 16 December 2008 (“Order of 16 December 2008”), in which the Chamber invited the Defence teams to present any additional objections to the Proposed Exhibits from the Prosecution in this case (“Additional Objections”) on the basis of the Decision on Presentation of Documents by the Prosecution in Cross-examination of Defence Witnesses of 27 November 2008 (“Decision of 27 November 2008”) and invited the Prosecution to file a response to any Additional Objections,⁶

NOTING the observations presented by the Prosecution concerning the Order of 16 December 2008, in which it essentially argues that it put prosecution evidence to the defence witnesses in court in accordance with the decisions and practices followed by the Chamber prior to 27 November 2008 and that it is no longer able to present these exhibits to them differently, or to take into account different or additional factors to present them,⁷

¹ IC 00864 and IC 00879 (amended list).

² IC 00865.

³ IC 00866, IC 00873 (corrigendum) and IC 00880 (supplement).

⁴ IC 00867.

⁵ IC 00868.

⁶ Order of 16 December 2008, p. 3.

⁷ Prosecution Observations Concerning the Trial Chamber’s 16 December 2008 Order Requesting Additional Observations, 8 January 2009, p. 2, paras. 4 and 6.

CONSIDERING that the Chamber first finds that the Defence teams did not raise Additional Objections on the basis of the Decision of 27 November 2008 to contest the Prosecution's Proposed Exhibits,

CONSIDERING also that the Chamber notes that three Proposed Exhibits from the Prlić Defence are not on the Prlić Defence's list of exhibits under Rule 65 *ter* of the Rules of Procedure and Evidence ("Rules"; "65 *ter* List");⁸ that these three Proposed Exhibits were included in a request by the Prlić Defence during the hearing of 14 November 2008 to add exhibits for the purpose of being put to Witness Mirko Zelenika ("Request to Add to the 65 *ter* List"),⁹

CONSIDERING that neither the Prosecution nor the other Defence teams have objected to the Request to Add to the 65 *ter* List,

CONSIDERING that the Chamber again reminds the Prlić Defence that in principle, in order to grant a request to add exhibits to the 65 *ter* List, these exhibits must be disclosed to the parties well enough in advance, in view of their presentation to a witness in court, so as not to hinder the preparation of their cross-examination,

CONSIDERING moreover that, pursuant to Guideline 8 of the Decision Adopting Guidelines for the Presentation of Defence Evidence of 24 April 2008 ("Decision of 24 April 2008"), the party seeking to put to a witness an exhibit not appearing on the 65 *ter* List must by way of a written motion seek leave of the Chamber to do so and provide the reasons why the exhibit is essential to the case and the reasons why it does not appear on the said List,¹⁰

CONSIDERING that in this case, the Prlić Defence did not comply with Guideline 8 and did not duly seek leave of the Chambers to put to the witness exhibits not on its 65 *ter* List,

CONSIDERING that despite this lack of diligence, the Chamber decides, after a *prima facie* examination of the reliability, relevance and probative value of Exhibits 1D 03038 and 1D 03040, that they may be added to the 65 *ter* List,

⁸ Exhibits 1D 03038, 1D 03039 and 1D 03040.

⁹ French Transcript, p. 33121.

¹⁰ Decision of 24 April 2008, p. 8 para. 26.

CONSIDERING however that contrary to what the Prlić Defence indicated in support of its Request to Add to the 65 *ter* List, it did not make use of Exhibit 1D 03039 during the hearing of Witness Mirko Zelenika; that the Chamber therefore finds that this exhibit is not essential to the Prlić Defence and that it need not be added to the 65 *ter* List,

CONSIDERING subsequently that the Chamber has examined each of the Proposed Exhibits based on the admissibility criteria defined in the Decision on the Admission of Evidence rendered by the Chamber on 13 July 2006 (“Decision of 13 July 2006”), and in the Decision of 24 April 2008,¹¹

CONSIDERING that the Chamber decides to admit into evidence the Proposed Exhibits marked “admitted” in the Annex attached to this decision as they were put to Witness Mirko Zelenika in court and present sufficient indicia of relevance, probative value and reliability,

CONSIDERING that the Chamber decides not to admit into evidence the Proposed Exhibits marked “not admitted” in the Annex attached to this decision as they do not comply with the instructions laid down in the Decisions of 13 July 2006 and 24 April 2008 for the reasons set out in the Annex attached to this decision,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 89 of the Rules,

PARTIALLY GRANTS the Request to Add Exhibits to the 65 *ter* List and authorises the Prlić Defence to add Exhibits 1D 03038 and 1D 03040 to the 65 *ter* List,

DENIES the Prlić Defence request to add Exhibit 1D 03039 to the 65 *ter* List,

GRANTS the requests for admission from the Stojić and Prlić Defence,

PARTIALLY GRANTS the requests for admission from the Prlić Defence and the Prosecution,

¹¹ Decision of 24 April 2008, Guideline 8 on the admission of documentary evidence through a witness, para. 30.

ADMITS into evidence the Proposed Exhibits marked “admitted” in the Annex attached to this Decision,

DENIES in all other respects the requests for admission by the Prlić Defence and the Prosecution for reasons set out in the attached Annex,

Done in English and in French, the French version being authoritative.

/signed/

Judge Jean-Claude Antonetti

Presiding Judge

Done this twenty-eighth day of January 2009,

At The Hague

The Netherlands

[Seal of the Tribunal]

Annex

Exhibit Number (Preferably in Numerical Order)	Party Proposing Admission of The Exhibit	Admitted/Not Admitted /Marked for Identification (MFI)
1D 00324	Prlić Defence	Admitted
1D 00333	Prlić Defence	Admitted
1D 00338	Prlić Defence	Admitted
1D 00343	Prlić Defence	Admitted
1D 00344	Prlić Defence	Admitted
1D 00349	Prlić Defence/Petković Defence	Admitted
1D 00772	Prlić Defence	Admitted
1D 00774	Prlić Defence	Admitted
1D 00780	Prlić Defence	Admitted
1D 00781	Prlić Defence	Admitted
1D 00782	Prlić Defence	Admitted
1D 00783	Prlić Defence	Admitted
1D 00790	Prlić Defence	Admitted
1D 00791	Prlić Defence	Admitted
1D 00914	Prlić Defence	Admitted
1D 00953	Prlić Defence	Admitted
1D 00957	Prlić Defence	Admitted
1D 00960	Prlić Defence	Admitted
1D 00969	Prlić Defence	Admitted
1D 00972	Prlić Defence	Admitted
1D 00973	Prlić Defence	Admitted
1D 00980	Prlić Defence	Admitted
1D 00990	Prlić Defence	Admitted
1D 00992	Prlić Defence	Admitted
1D 01007	Prlić Defence	Admitted
1D 01009	Prlić Defence	Admitted
1D 01010	Prlić Defence	Admitted
1D 01011	Prlić Defence	Admitted
1D 01012	Prlić Defence	Admitted
1D 01013	Prlić Defence	Admitted
1D 01027	Prlić Defence	Admitted
1D 01031	Prlić Defence	Admitted
1D 01034	Prlić Defence	Admitted
1D 01042	Prlić Defence	Admitted
1D 01043	Prlić Defence	Admitted
1D 01063	Prlić Defence	Admitted
1D 01070	Prlić Defence	Admitted
1D 01089	Prlić Defence	Not Admitted (Reason: the exhibit was not presented in court)
1D 01308	Prlić Defence	Admitted
1D 01447	Prlić Defence	Admitted
1D 01448	Prlić Defence	Admitted
1D 01449	Prlić Defence	Not Admitted (Reason: the exhibit is identical to Exhibit 1D 00963)

		that was admitted by the Decision of 13 December 2006 regarding Witness Safet Idrizović).
1D 01450	Prlić Defence	Admitted
1D 01451	Prlić Defence	Admitted
1D 01453	Prlić Defence	Admitted
1D 01455	Prlić Defence	Admitted
1D 01456	Prlić Defence	Admitted
1D 01460	Prlić Defence	Admitted
1D 01461	Prlić Defence	Admitted
1D 01462	Prlić Defence	Admitted
1D 01463	Prlić Defence	Admitted
1D 01464	Prlić Defence	Admitted
1D 01470	Prlić Defence	Not Admitted (Reason: the exhibit was not presented in court)
1D 01483	Prlić Defence	Admitted
1D 01492	Prlić Defence	Admitted
1D 01500	Prlić Defence	Admitted
1D 01712	Prlić Defence	Admitted
1D 01847	Prlić Defence	Not admitted (Reason: the witness could not comment on the reliability, relevance and probative value of the exhibit)
1D 01859	Prlić Defence	Admitted
1D 01860	Prlić Defence	Admitted
1D 02243	Prlić Defence	Admitted
1D 02298	Prlić Defence	Not admitted (Reason: the witness could not comment on the reliability, relevance and probative value of the exhibit)
1D 02471	Prlić Defence	Admitted
1D 02717	Prlić Defence	Admitted
1D 02753	Prlić Defence	Admitted
1D 02756	Prlić Defence	Admitted
1D 02757	Prlić Defence	Admitted
1D 02758	Prlić Defence	Admitted
1D 02777	Prlić Defence	Admitted
1D 03038	Prlić Defence	Admitted
1D 03039	Prlić Defence	Not admitted (Reason: the Chamber rejected the addition of the exhibit to the Prlić Defence 65 <i>ter</i> List and the exhibit was not put the witness in court)
1D 03040	Prlić Defence	Admitted
P 00272	Prlić Defence	Admitted
P 00945	Prlić Defence	Admitted
IC 00863	Prlić Defence	Admitted
2D 00237	Stojić Defence	Admitted
2D 00814	Stojić Defence	Admitted
2D 01036	Stojić Defence	Admitted
2D 01431	Stojić Defence	Admitted

2D 01433	Stojić Defence	Admitted
2D 01439	Stojić Defence	Admitted
2D 01442	Stojić Defence	Admitted
P 01977	Stojić Defence	Admitted
P 02128	Stojić Defence/Petković Defence	Admitted
1D 01243	Petković Defence	Admitted
1D 01471	Petković Defence	Admitted
3D 03226 (article 2)	Petković Defence	Admitted
4D 00085	Petković Defence	Admitted
4D 00125	Petković Defence	Admitted
4D 00139	Petković Defence	Admitted
4D 00430	Petković Defence	Admitted
4D 00447	Petković Defence	Admitted
4D 00451	Petković Defence	Admitted
4D 00453	Petković Defence	Admitted
4D 00454	Petković Defence / Prosecution	Admitted
4D 01030	Petković Defence	Admitted
4D 01241	Petković Defence	Admitted
4D 01242	Petković Defence	Admitted
IC 00862	Petković Defence	Admitted
P 00195	Prosecution	Not admitted (Reason: the witness could not comment on the reliability, relevance and probative value of the exhibit)
P 01631	Prosecution	Admitted
P 09520	Prosecution	Admitted
P 09523	Prosecution	Admitted
P 10654	Prosecution	Not admitted (Reason: the witness could not comment on the reliability, relevance and probative value of the exhibit)
P 10667	Prosecution	Admitted
P 10668	Prosecution	Admitted
P 10669	Prosecution	Admitted
P 10671	Prosecution	Admitted
P 10672	Prosecution	Admitted
P 10673	Prosecution	Admitted
P 10675	Prosecution	Not admitted (Reason: the witness could not comment on the reliability, relevance and probative value of the exhibit)
1D 00772	Prosecution	Admitted